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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Appln. of: David W. Koenig, et al.

Appln. No.: 10/036,862

Filed: December 21, 2001

For: WET DRY CLEANING SYSTEM

Attorney Docket No: 659/915

Examiner: Abbott

Art Unit: 3644

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL

Sir:

Attached is/are:

- ☒ Transmittal Letter (in duplicate); Appellant's Reply Brief (in triplicate)
- ☒ Return Receipt Postcard

Fee calculation:

- ☒ No additional fee is required.
- ☐ Small Entity.
- ☐ An extension fee in an amount of \$\_\_\_\_\_ for a \_\_\_\_\_-month extension of time under 37 C.F.R. § 1.136(a).
- ☐ A petition or processing fee in an amount of \$\_\_\_\_\_ under 37 C.F.R. § 1.17(\_\_\_\_\_).
- ☐ An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity	
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	or	Rate	Add'l Fee
Total		Minus			x \$25=			x \$50=	
Indep.		Minus			x100=			x \$200=	
First Presentation of Multiple Dep. Claim					+ \$180=			+ \$360=	
					Total	\$		Total	\$

Fee payment:

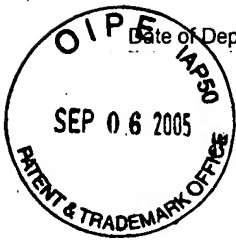
- ☐ A check in the amount of \$\_\_\_\_\_ is enclosed.
- ☐ Please charge Deposit Account No. 23-1925 in the amount of \$\_\_\_\_\_. A copy of this Transmittal is enclosed for this purpose.
- ☐ Payment by credit card in the amount of \$\_\_\_\_\_ (Form PTO-2038 is attached).
- ☒ The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

September 6, 2005  
Date

Amanda M. Church  
Amanda M. Church (Reg. No. 52,469)

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Date of Deposit: September 6, 2005

Our Case No. 659/915  
K-C Ref. No. 16,940

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:	)	
	)	
David W. Koenig, et al.	)	
	)	Examiner Abbott
Serial No. 10/036,862	)	
	)	
Filing Date: December 21, 2001	)	Group Art Unit No. 3644
	)	
For WET DRY CLEANING SYSTEM	)	
	)	
	)	
	)	

**APPELLANT'S REPLY BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This brief is in reply to the Examiner's Answer, dated July 8, 2005.

## I. ARGUMENT

As the claims were addressed separately in Appellants' original Appeal brief, they will now be addressed together for the purpose of responding to the Examiner's answer, which also treats the claims together. Appellants believe that as grouped in the original Appeal Brief, the claims are separately patentable from one another.

### A. **Claims 1-34 are not obvious under 35 USC § 103 over U.S. Patent No. 5,950,960 to Marino because Marino does not teach or suggest each and every element of the claimed invention.**

Marino does not teach or suggest each and every element of the claimed invention. Moreover the Examiner's use of personal knowledge and conclusory statements is insufficient to establish a *prima facie* case of obviousness under 35 USC §103. When an Examiner intends to rely on common knowledge or take Official Notice with respect to core factual findings in a determination of patentability, the Examiner cannot simply reach conclusions based on his or her own understanding or experience, or on his or her assessment of what would be basic knowledge or common sense. *In re Zurko*, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001). Rather, the Examiner must point to some concrete evidence in the record in support of these findings. *Id.*

This point was addressed in Appellants' Appeal brief, pages 8-10. The Examiner has not addressed Appellants' arguments on this point, has ignored the law, the legal standards, and even admits that there is no concrete evidence in the record to support these findings. For this reason alone, the Examiner's rejections should be reversed.

For example, while Marino does not specifically teach providing instructions to the user, as recited in Claim 1, the Examiner takes Official Notice as to the "well known implement of instructional data associated with devices for sale." (Examiner's

Response, p. 4). However, the differences between the invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of the printed matter. *In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983).

The Appellants have claimed a new and unobvious functional relationship between the printed matter, i.e. the instructions, and the substrate, i.e. the claimed use of the wet and dry products. *Gulack* at 1386. In fact, the Examiner admits that a specific written teaching on how an animal or person is cleaned with wipes cannot be found. (Examiner's Response, p. 4) The mere assertion that it was known to use instructional data with devices for sale is insufficient to render the claimed method, system, or package obvious. This is true especially in light of the teachings of Marino, which Appellants maintain, teaches away from the claimed invention.

At col. 1, lines 56-60, Marino states that:

"[I]t would be desirable to provide such a dispenser which also can be utilized to dispense dry tissue so that satisfactory use can be attained from users who prefer dry tissue **and** users who prefer moist tissue." [emphasis and shading added]

Appellants note the Examiner's use of only part of the above quote to support the Examiner's Answer. (Examiner's Answer, p. 5). The lighter shaded portion completes the quote from Marino. Read in its entirety, rather than the cropped version the Examiner relies upon, Marino clearly acknowledges that there are users who prefer dry tissue and users who prefer moist tissue. The reference appears to acknowledge that it would be desirable to accommodate users that prefer wet tissue **instead of** dry tissue.

If, as the Examiner suggests, Marino suggested that both wet and dry tissue can be used together, the reference would have read "users who prefer dry tissue and moist tissue." The Examiner's interpretation makes the second "users who prefer" void of

meaning. Appellants, on the other hand, reading the teachings of Marino in full, interpret Marino as providing a device that can be used to accommodate different types of end-users. Thus, the reference teaches away from Appellants claimed invention.

Without the teaching in Marino, the Examiner's rejection is based upon conclusory statements and Official Notices. As mentioned above, Appellants' Appeal brief addresses the insufficiency of the Examiner's conclusory statement that the claims would be obvious to one of skill in the art. The Examiner does not address the Appellants argument in the Examiner's Response. The Examiner also does not address the insufficiency of reliance on common knowledge or of taking Official Notice.

The Examiner has not yet provided a declaration or affidavit supporting the statements of "Official Notice" from statements within the reference, Marino, or from other documentary evidence on the record which would provide a motivation or suggestion to modify the Marino reference. Such is required by the MPEP, § 2144.03. (See Appellants' Appeal Brief, p. 11). For the reasons stated above, the Examiner has failed to establish a *prima facie* case of obviousness and Applicants request that this rejection be withdrawn.

**B. Claims 2-4 and 24-26 are not obvious in view of Marino because the method claims produce surprising and unexpected results.**

It would not have been obvious to one of skill in the art to provide the specific instructions of claims 2-4 and 24-26 because the instructions that are given produce surprising and unexpected results. (p. 15, lines 10-12). Claims 2-4 and 24-26 include wiping sequences which recite using at least two dry wipes and one wet wipe. What the inventors found to be unexpected was the fact that the best cleaning ratios were the sequences that included at least two dry wipes and only one wet wipe. This was

contrary to common sense or popular thinking that the more wet wipes used, the better the cleaning ratio would be. Thus, it would have been expected that the sequences including at least two wet wipes and one dry wipe would yield better cleaning ratios than those including only one wet wipe.

The Examiner maintains the rejection over these claims, stating that the claimed instructions yield expected results, and are therefore, not considered novel.

(Examiner's Answer, p. 6). The Examiner, however, provides no support for this assertion. Instead, the Examiner states that it is unclear how the removal of fluorescent beads reflects or pertains to soil removal to substantiate a finding of unexpected results. (Examiner's Answer, p. 7).

In the "Examples" section of Appellants' application, Appellants describe a method whereby fluorescent beads were pipetted onto various squares of material. These beads were allowed to adhere to the skin-like material, simulating the soiling of that material. ( p. 11, l. 12-21). The specification further goes on to explain:

The size of soil particles can vary widely. For example, approximate sizes of soils are believed to be 4 nanometers (nm) for globular proteins, 10-100 nm for viruses, 1-10 micrometers ( $\mu\text{m}$ ) for most bacteria, 10-30  $\mu\text{m}$  for most eukaryotic animal cells, and 10-80  $\mu\text{m}$  and greater for pollen and inorganic/organic aggregates. Since most of soils are cells (bacterial or eukaryotic) or components of those cells, the surface properties of the soil can be characterized by a net negative charge. The net negative charge is associated with but not limited to the presence of glyco- and mucoproteins most of them containing sialic acid residues, phospholipids, sulphates of mucopolysaccharides, cellulose, lipopolysaccharides, and teichoic acids contained in the various cell structures.

A 10 mm particles as used in these examples thus has a size that is approximately in the middle of the range of sizes for most soils associated with the skin surface. A carboxylate-modified bead as used in these examples is believed to have surface properties that mimic the negative charge of most biological soils. The Vitro-Corneum<sup>TM</sup> product is used to provide a surface which is similar to human skin.

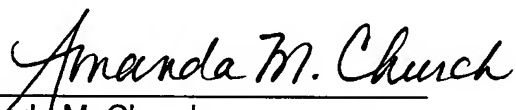
(p. 11, l. 29 to p. 12, l. 13).

Clearly, the fluorescent beads chosen by Appellants for their examples reflect the properties and characteristics of soil. Therefore, the removal of such beads simulates the cleaning effects of the various claimed sequences. Appellants maintain that it was unexpected that the cleaning sequences using two or more dry wipes and only one wet wipe had a better cleaning ratio than the cleaning sequences using at least two wet wipes and only one dry wipe. Therefore, Appellants request that the rejection of claims 2-4 and 24-26 be reversed.

## **II. Conclusion**

The cited reference, either alone or in combination with the Examiner's assertions, does not provide a valid basis for a *prima facie* obviousness rejection of the present claims. Accordingly, Appellants submit that the present invention is fully patentable over Marino and the Examiner's rejection should be REVERSED.

Respectfully submitted,

  
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